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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: William A. Gindlesperger **Atty. Docket No.** 085919.00004
Serial No.: 09/ 450,023 **Group Art Unit:** 3624
Filed: November 29, 1999 **Examiner:** Daniel S. Felten
Invention: "APPARATUS AND METHOD FOR OBTAINING LOWEST BID FROM INFORMATION PRODUCT VENDORS"

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APPEAL BRIEF

I. REAL PARTY IN INTEREST

The real party in interest is e-LYNXX Corporation as a result of transfer of all right, title and interest to the subject matter of this application Serial No. 09/450,023, via the Assignment recorded in the Patent Office in Reel 011-653 Frame 0731 on March 21, 2001.

II. RELATED APPEALS AND INTERFERENCES

Applicants and the undersigned are currently unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

The claims currently stand in condition as modified by the Supplemental Amendment dated January 27, 2003 which has been entered by the Examiner, as well as the Amendment dated August 11, 2003 canceling claims 2-24. Accordingly, claim 1 is the only claim now pending, and stands in condition as set forth in the attached Appendix of Claims on Appeal.

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IV. STATUS OF AMENDMENTS

All Amendments have been entered as noted in the status of claims and none have been filed subsequent to the Amendment dated August 11, 2003. As noted above all Amendments have been entered by the Examiner.

V. SUMMARY OF INVENTION

The present Invention is directed to a system and method for matching and selecting selected vendors from an overall group of vendors who are capable of providing customized goods or services specified in an invitation for bid or similar job solicitation. Advantageously, the request for bid or pricing information is thereafter selectively transmitted to only those vendors who have been identified as being qualified to bid on the specified goods or services.

In accordance with the exemplary embodiment of the invention described in the application, the system and method is used to preferably quantify a set of buyers attributes associated with at least one type of customized good or service and thereafter quantifying a set of vendor attributes associated with manufacturing, production, or provider capabilities corresponding to the plurality of vendors. A comparison is made in accordance with buyer defined selection criteria and a data set is thereafter generated which represents a pool of vendors from the overall group that are qualified to provide the specified goods or services.

The prior art of record provides no teaching or suggestion whatsoever regarding this advance in the art. More specifically, all previous systems were deficient in that automated bidding typically transmitted a request for proposal or bid information to each member in a group of members participating in an automated bidding system. Significantly, this resulted

in substantial inefficiencies due to a number of factors. First, the key to obtaining the lowest competitive price for any given customized good or service is finding a vendor with idle equipment and/or labor at the precise time such good or service needs to be furnished. Vendors are constantly seeking to fill their open production or service time with short-turnaround jobs, and many vendors will price these jobs substantially below normal profit margins because they know that any income above their variable costs on the job will "contribute" to their bottom line. The problem in obtaining such "contribution pricing" on a consistent basis is that the buyer must manage a vendor pool large enough to assure that at least one vendor has open production or service time at the precise time each job must be performed.

This is particularly difficult in industries like printing where the buyer has a recurring need to buy different types of customized jobs, most of which can only be produced by different subsets of vendors within a given vendor pool, each subset or vendor having different equipment, expertise, and production specialties. As a consequence, under the prior art for automated bidding systems, many recipients of the job solicitation were unqualified or otherwise not suitable for performing the specified services or providing the specified goods. The buyer would then be left with a Hobson's choice of either (1) keeping the vendor pool large to obtain "contribution pricing" (thereby incurring added administrative costs while risking job performance by an unqualified vendor) or (2) limiting the bidding pool to a small number of vendors with proven ability (thereby reducing the chance of finding a vendor with open production or service time).

For their part, vendors who were interested in participating in such an automated bidding system were required to review all solicitations that the system provided, even those

for which they were not qualified to perform. Such vendors would either then (i) get discouraged and drop out of the vendor pool; (ii) broker some or all of the job to other vendors without the buyer's knowledge; (iii) bid for unqualified work out of financial need and attempt to produce the job anyway; or (iv) seek to negotiate changes in the solicitation with the buyer, thereby slowing the production cycle and adding to the buyer's administrative costs.

As a result of these inefficiencies in the prior art, buyers of customized goods and services regularly confront an "iron triangle" of quality, timeliness, and cost. Buyers want a product or service that is good, fast, and cheap, but what they discover is that traditional procurement methods will, at best, only achieve, two of these three goals on any given job. Thus, a buyer might demand and receive top quality on a "rush" job, but only if they are willing to pay a premium price. Conversely, a lower price might achieve cost savings, but also compromise quality and timeliness.

The present invention overcomes the shortcomings of the prior art by selectively identifying only qualified vendors from a larger vendor pool (or multiple sets of vendor pools) and thereafter selectively transmitting job solicitations to only the qualified vendors. In accordance with the presently claimed invention, bid data from the qualified vendors is received and a lowest price is identified in accordance with an alternate embodiment of the system. A buyer may thereafter provide approval data and an order may automatically be generated based on the approval data. The preferred embodiments of the system may also be implemented through an electronic network such as, for example, the Internet. In this manner, the present invention overcomes the "iron triangle" of quality, timeliness, and cost by enabling the buyer to manage multiple pools of qualified vendors that are each large

enough to identify, for any given job, a preferred vendor with open production or service time at the precise time needed who is then willing to offer a below normal price.

VI ISSUES PRESENTED FOR REVIEW

- I.** Whether the combination of references asserted by the Examiner (U.S. Patent Nos. 5,794,287 and 5,659,731) provide the requisite teaching or suggestion to render claim 1 invalid as being obvious in light of the prior art.
- II.** Whether the Gustafson reference, United States Patent No. 5,659,731 is non-analogous art to the claimed invention and therefore may not be used in rejecting the claims.

VII GROUPING OF CLAIMS

Claim 1 is the only claim pending in the application.

VIII ARGUMENT

Applicant respectfully submits that the prior art references of record, whether considered alone, or in combination, fail to either teach or suggest Applicant's presently claimed invention. Claim 1 requires, among other limitations:

"automatically identifying at least one group from the pool of vendors as qualified for receiving an invitation for bid, based on said comparison;

transmitting a solicitation to only selected members from the pool of vendors. . . "

Applicant notes that the references of record fundamentally fail to provide any teaching or suggestion whatsoever regarding the selective transmission to a qualified group from among

all members in a pool of vendors. Therefore, the rejection is improper and should be withdrawn.

A. The Cited References Fail to Teach or Suggest the Claimed Invention.

Claim 1, the only claim in the application currently stands rejected as being obvious in light of the combined teachings of United States Patent No. 5,794,207 to Walker referenced by the Examiner as "WA207" and United States Patent No. 5,659,731 to Gustafson. In the final office action, the Examiner has again recognized the deficiency of the WA207 reference in that at the very least, it fails to disclose automatically comparing "or matching" vendor records to job data and automatically identifying at least one group from the pool of vendor records as qualified for receiving an invitation for bid based on the results of the comparison. Applicant completely agrees with the deficiencies of the art identified by the Examiner.

In hoping to overcome this deficiency, the Examiner cites the teachings of the Gustafson reference and particularly the Abstract as well as the Summary of the Invention section found in column 3, lines 18 through column 4, line 9. Applicant agrees with the Examiner's assessment that the Walker 207 reference is deficient at the very least for the reasons cited by the Examiner. However, Applicant submits that the Gustafson reference similarly fails to provide the requisite teaching or suggestion that renders Applicant's claimed invention invalid as being obvious in light of cited art. The applicable standard requires that there be some specific teaching or suggestion in the prior art regarding the recognized deficiency.

However, an examination of the reference and, particularly, the cited portions set forth by the Examiner confirms that the combination of references remains deficient and cannot support the Examiner's claim rejections. In support of the Examiner's position, the Examiner has asserted that it would have been obvious for a person skilled in the art to integrate the method of automatically identifying, matching, and evaluating information on a plurality of seller/vendor entities as disclosed by Gustafson. However, Applicant submits that this is not true because the Gustafson reference does not teach automatically matching and evaluating information on the plurality of entities in order to designate at least one group as being particularly qualified for selectively receiving an invitation for bid as claimed.

Rather, the Gustafson reference is merely directed to a system that accepts a given search entity from a user and utilizes a database in order to determine with relative degrees of accuracy the identity of a possible matching but unknown entity from a large list of entries contained in the database. More specifically, in Gustafson, a user inputs a plurality of identity-related attributes which are used to aid in the specific identification of a given entity and the system thereafter determines a possible matching entity and assigns a numerical grade to reflect the matched quality of each identity-related attribute. Essentially, Gustafson is directly ascertaining the identity of a specific entity from among many and the grading system of Gustafson is merely directed to associating scores with the likelihood that the identity match is accurate. This is in sharp contrast with Applicant's presently claimed invention, which seeks to match not identity-related attributes but capability and other non-identity-related descriptive attributes, wherein a select group from a plurality of already known pre-approved members is automatically designated as being qualified to receive an invitation for bid as described in the instant application.

The specific application to which the Gustafson reference is directed is the identification of a specific unknown entity to which credit will be granted. The systems and methods disclosed therein assigns a grade to each score of a plurality of the identity-related attributes with the grade being selected from a small number of grades in order to distinguish at least a clear match, a clear mismatch, or a possible match for a specific entity that is sought to be identified.

One particularly significant distinction is the fact that Gustafson merely seeks to correctly identify a specific unknown single entity from among a large number of entities contained in a database so that credit may be appropriately granted to the specifically desired entity. This identification process contrasts sharply with Applicant's presently disclosed and claimed invention wherein the bidding process is enhanced by automatically, selectively designating a group of known vendors who are particularly qualified to bid on a specific project. Indeed, the combination of Walker with Gustafson would not result in the specific innovations disclosed and claimed by the Applicant in the present application. The combination of Walker with Gustafson would merely result in a bidding system wherein the identity of a specific member in the database could be ascertained based on partial information with relative degrees of accuracy. Accordingly, in light of the foregoing, for these reasons alone the rejections are improper.

B. Gustafson is Not a Proper Prior Art Reference.

Gustafson is not even an appropriate prior art reference as it is non-analogous art in that it is directed to solving a much different problem, namely ascertaining the identity of a single member from a database based on incomplete or inaccurate identification information.

Pursuant to MPEP 2141.01(a), the Examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. In order to rely on a reference as a basis for rejection, the reference must either be in the field of the Applicant's endeavor, or, if not, then it must be reasonably pertinent to the particular problem with which the claimed invention is concerned. In re Clay, 966 F.2d 656, 659 (Fed. Cir. 1992).

In the present circumstance, the Gustafson reference is clearly not directed to innovations in automated bidding systems or to providing bidding systems with enhanced efficiency through identifying qualified groups. As noted above, Gustafson is directed to ascertaining the correctness of a possible match based on partial identifying information. It is not directed to identifying a qualified group and thereafter selectively transmitting bids to members of that group. Gustafson is thus non-analogous art and may not be properly used in rejecting the claims of the instant application.

In contrast to the subject matter of Gustafson, Applicant's claimed invention is directed to a bidding process wherein the overall bidding systems and methods are improved through increased efficiency by selectively transmitting bid invitations to only those vendor entities (whose identity is already known by virtue of the fact that their membership in the buyer's overall vendor pool has been pre-approved) that are qualified to provide specific services or which are otherwise selectively designated as qualified based on certain specified characteristics. This increased efficiency could not be achieved by the combination of Gustafson and Walker.

In summary, the Applicant submits that it is fundamentally inappropriate to base the rejection on the combination of Gustafson and WA207 because Gustafson is not appropriate prior art. Furthermore, even if it were appropriate to make the combination of references as asserted by the Examiner, Applicant notes that this would not result in the selected transmission of bids to a group of vendors from a group of vendors in an overall vendor database.

In light of the foregoing, Applicant respectfully requests the these rejections be withdrawn and that claim 1 be allowed.

Date: November 5, 2003

Respectfully submitted,


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CLAIMS ON APPEAL:

1. (Previously Amended) A method for bidding by vendors of customized goods or services, comprising steps of:

receiving a vendor record, said vendor record having vendor identifier data representing a vendor, and a vendor capability data identifying a capability of said vendor to provide a customized good or service for each of a plurality of vendors in a pool of vendors;

receiving a job data from a buyer, said job data having a buyer identifier data, and a job descriptor data representing a custom job for which said buyer wishes a price quote or bid;

automatically comparing said vendor records to said job data;

automatically identifying at least one group from the pool of vendors as qualified for receiving an invitation for bid, based on said comparison;

transmitting a solicitation to only selected members from the pool of vendors;

receiving bid response data from at least one of said vendors which received said solicitation, said bid response data identifying each of the vendors from which it was received and a bid price; and

outputting to said buyer said bid response data.

2. (Previously Canceled)

3. (Previously Canceled)

4. (Previously Canceled)

5. (Previously Cancelled)

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